

106TH CONGRESS  
1ST SESSION

# S. 768

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## AN ACT

To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Military and  
5       Extraterritorial Jurisdiction Act of 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Civilian employees of the Department of  
4 Defense, and civilian employees of Department of  
5 Defense contractors, provide critical support to the  
6 Armed Forces of the United States that are de-  
7 ployed during a contingency operation.

8 (2) Misconduct by such persons undermines  
9 good order and discipline in the Armed Forces, and  
10 jeopardizes the mission of the contingency operation.

11 (3) Military commanders need the legal tools to  
12 address adequately misconduct by civilians serving  
13 with Armed Forces during a contingency operation.

14 (4) In its present state, military law does not  
15 permit military commanders to address adequately  
16 misconduct by civilians serving with Armed Forces,  
17 except in time of a congressionally declared war.

18 (5) To address this need, the Uniform Code of  
19 Military Justice should be amended to provide for  
20 court-martial jurisdiction over civilians serving with  
21 Armed Forces in places designated by the Secretary  
22 of Defense during a “contingency operation” ex-  
23 pressly designated as such by the Secretary of De-  
24 fense.

25 (6) This limited extension of court-martial ju-  
26 risdiction over civilians is dictated by military neces-

1       sity, is within the constitutional powers of Congress  
2       to make rules for the government of the Armed  
3       Forces, and, therefore, is consistent with the Con-  
4       stitution of the United States and United States  
5       public policy.

6               (7) Many thousand civilian employees of the  
7       Department of Defense, civilian employees of De-  
8       partment of Defense contractors, and civilian de-  
9       pendents accompany the Armed Forces to installa-  
10      tions in foreign countries.

11             (8) Misconduct among such civilians has been a  
12      longstanding problem for military commanders and  
13      other United States officials in foreign countries,  
14      and threatens United States citizens, United States  
15      property, and United States relations with host  
16      countries.

17             (9) Federal criminal law does not apply to  
18      many offenses committed outside of the United  
19      States by such civilians and, because host countries  
20      often do not prosecute such offenses, serious crimes  
21      often go unpunished and, to address this jurisdic-  
22      tional gap, Federal law should be amended to punish  
23      serious offenses committed by such civilians outside  
24      the United States, to the same extent as if those of-

1       fenses were committed within the special maritime  
2       and territorial jurisdiction of the United States.

3           (10) Federal law does not apply to many crimes  
4       committed outside the United States by members of  
5       the Armed Forces who separate from the Armed  
6       Forces before they can be identified, thus escaping  
7       court-martial jurisdiction and, to address this juris-  
8       dictional gap, Federal law should be amended to  
9       punish serious offenses committed by such persons  
10      outside the United States, to the same extent as if  
11      those offenses were committed within the special  
12      maritime and territorial jurisdiction of the United  
13      States.

14   **SEC. 3. COURT-MARTIAL JURISDICTION.**

15       (a) **JURISDICTION DURING CONTINGENCY OPER-**  
16   **ATIONS.**—Section 802(a) of title 10, United States Code  
17   (article 2(a) of the Uniform Code of Military Justice), is  
18   amended by inserting after paragraph (12) the following:

19           “(13) To the extent not covered by paragraphs  
20       (10) and (11), persons not members of the armed  
21       forces who, in support of a contingency operation de-  
22       scribed in section 101(a)(13)(B) of this title, are  
23       serving with and accompanying an armed force in a  
24       place or places outside the United States specified  
25       by the Secretary of Defense, as follows:

1                   “(A) Employees of the Department of De-  
2                   fense.

3                   “(B) Employees of any Department of De-  
4                   fense contractor who are so serving in connec-  
5                   tion with the performance of a Department of  
6                   Defense contract.”.

7           (b) EFFECTIVE DATE.—The amendment made by  
8 subsection (a) shall take effect on the date of the enact-  
9 ment of this Act and apply with respect to acts or omis-  
10 sions occurring on or after that date.

11 **SEC. 4. FEDERAL JURISDICTION.**

12           (a) CRIMINAL OFFENSES COMMITTED OUTSIDE THE  
13 UNITED STATES.—Title 18, United States Code, is  
14 amended by inserting after chapter 211 the following:

15 **“CHAPTER    212—CRIMINAL    OFFENSES**  
16 **COMMITTED   OUTSIDE   THE   UNITED**  
17 **STATES**

“Sec.

“3261. Criminal offenses committed by persons formerly serving with, or pres-  
                  ently employed by or accompanying, the Armed Forces outside  
                  the United States.

“3262. Delivery to authorities of foreign countries.

“3263. Regulations.

“3264. Definitions.

1 **“§ 3261. Criminal offenses committed by persons for-**  
 2 **merly serving with, or presently em-**  
 3 **ployed by or accompanying, the Armed**  
 4 **Forces outside the United States**

5 “(a) IN GENERAL.—Whoever, while serving with, em-  
 6 ployed by, or accompanying the Armed Forces outside of  
 7 the United States, engages in conduct that would con-  
 8 stitute an offense punishable by imprisonment for more  
 9 than 1 year if the conduct had been engaged in within  
 10 the special maritime and territorial jurisdiction of the  
 11 United States, shall be guilty of a like offense and subject  
 12 to a like punishment.

13 “(b) CONCURRENT JURISDICTION.—Nothing in this  
 14 chapter may be construed to deprive a court-martial, mili-  
 15 tary commission, provost court, or other military tribunal  
 16 of concurrent jurisdiction with respect to offenders or of-  
 17 fenses that by statute or by the law of war may be tried  
 18 by a court-martial, military commission, provost court, or  
 19 other military tribunal.

20 “(c) ACTION BY FOREIGN GOVERNMENT.—No pros-  
 21 ecution may be commenced against a person under this  
 22 section if a foreign government, in accordance with juris-  
 23 diction recognized by the United States, has prosecuted  
 24 or is prosecuting such person for the conduct constituting  
 25 such offense, except upon the approval of the Attorney  
 26 General or the Deputy Attorney General (or a person act-

1 ing in either such capacity), which function of approval  
 2 shall not be delegated.

3 “(d) ARRESTS.—

4 “(1) LAW ENFORCEMENT PERSONNEL.—The  
 5 Secretary of Defense may designate and authorize  
 6 any person serving in a law enforcement position in  
 7 the Department of Defense to arrest, in accordance  
 8 with applicable international agreements, outside of  
 9 the United States any person described in subsection  
 10 (a) if there is probable cause to believe that such  
 11 person engaged in conduct that constitutes a crimi-  
 12 nal offense under subsection (a).

13 “(2) RELEASE TO CIVILIAN LAW ENFORCE-  
 14 MENT.—A person arrested under paragraph (1)  
 15 shall be released to the custody of civilian law en-  
 16 forcement authorities of the United States for re-  
 17 moval to the United States for judicial proceedings  
 18 in relation to conduct referred to in such paragraph  
 19 unless—

20 “(A) such person is delivered to authorities  
 21 of a foreign country under section 3262; or

22 “(B) such person has had charges brought  
 23 against him or her under chapter 47 of title 10  
 24 for such conduct.

1 **“§ 3262. Delivery to authorities of foreign countries**

2 “(a) IN GENERAL.—Any person designated and au-  
3 thorized under section 3261(d) may deliver a person de-  
4 scribed in section 3261(a) to the appropriate authorities  
5 of a foreign country in which such person is alleged to  
6 have engaged in conduct described in section 3261(a) of  
7 this section if—

8 “(1) the appropriate authorities of that country  
9 request the delivery of the person to such country  
10 for trial for such conduct as an offense under the  
11 laws of that country; and

12 “(2) the delivery of such person to that country  
13 is authorized by a treaty or other international  
14 agreement to which the United States is a party.

15 “(b) DETERMINATION BY THE SECRETARY.—The  
16 Secretary of Defense, in consultation with the Secretary  
17 of State, shall determine which officials of a foreign coun-  
18 try constitute appropriate authorities for purposes of this  
19 section.

20 **“§ 3263. Regulations**

21 “(a) IN GENERAL.—The Secretary of Defense, after  
22 consultation with the Secretary of State and the Attorney  
23 General, shall issue regulations governing the apprehen-  
24 sion, detention, and removal of persons under this chapter.  
25 Such regulations shall be uniform throughout the Depart-  
26 ment of Defense.



1 “(b) NOTICE TO THIRD PARTY NATIONALS.—

2 “(1) IN GENERAL.—The Secretary of Defense,  
 3 after consultation with the Secretary of State, shall  
 4 issue regulations requiring that, to the maximum ex-  
 5 tent practicable, notice shall be provided to any per-  
 6 son serving with, employed by, or accompanying the  
 7 Armed Forces outside the United States who is not  
 8 a national of the United States that such person is  
 9 potentially subject to the criminal jurisdiction of the  
 10 United States under this chapter.

11 “(2) FAILURE TO PROVIDE NOTICE.—The fail-  
 12 ure to provide notice as prescribed in the regulations  
 13 issued under paragraph (1) shall not defeat the ju-  
 14 risdiction of a court of the United States or provide  
 15 a defense in any judicial proceeding arising under  
 16 this chapter.

17 **“§ 3264. Definitions**

18 “In this chapter—

19 “(1) a person is ‘accompanying the Armed  
 20 Forces outside of the United States’ if the person—

21 “(A) is a dependent of—

22 “(i) a member of the Armed Forces;

23 “(ii) a civilian employee of a military  
 24 department or of the Department of De-  
 25 fense; or

1 “(iii) a Department of Defense con-  
 2 tractor or an employee of a Department of  
 3 Defense contractor;

4 “(B) is residing with such member, civilian  
 5 employee, contractor, or contractor employee  
 6 outside the United States; and

7 “(C) is not a national of or ordinarily resi-  
 8 dent in the host nation;

9 “(2) the term ‘Armed Forces’ has the same  
 10 meaning as in section 101(a)(4) of title 10; and

11 “(3) a person is ‘employed by the Armed  
 12 Forces outside of the United States’ if the person—

13 “(A) is employed as a civilian employee of  
 14 the Department of Defense, as a Department of  
 15 Defense contractor, or as an employee of a De-  
 16 partment of Defense contractor;

17 “(B) is present or residing outside of the  
 18 United States in connection with such employ-  
 19 ment; and

20 “(C) is not a national of or ordinarily resi-  
 21 dent in the host nation.”.

22 (b) CLERICAL AMENDMENT.—The table of chapters  
 23 at the beginning of part II of title 18, United States Code,  
 24 is amended by inserting after the item relating to chapter  
 25 211 the following:

**“212. Criminal Offenses Committed Outside the United  
States ..... 3621”.**

Passed the Senate July 1, 1999.

Attest:

*Secretary.*

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